

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
NORTHERN DIVISION

NO.: 2:17-CV-23-H

SABRINA LIVERMAN, and MARCUS )  
FOREHAND, )  
 )  
Plaintiffs, )  
 )  
 )  
v. )  
 )  
 )  
DARRYL LIVERMAN, )  
individually and in his )  
official capacity as Sheriff )  
of Tyrrell County; DEP. )  
KAREN SIMMONS, individually )  
and in her official capacity )  
as a Deputy of Tyrell )  
County; AL SUMMERLIN and )  
JASON GODFREY, individually )  
and in their official )  
capacities as SBI agents, )  
 )  
Defendants. )

**ORDER**

This matter is before the court on plaintiffs' failure to comply with the orders of this court. On June 8, 2018, United States Magistrate Judge Kimberly A. Swank filed a Memorandum and Recommendation (M&R) recommending that this action be dismissed in its entirety, pursuant to Rule 41(b), for plaintiffs' failure to prosecute or to comply with this court's prior orders.

The M&R details the circumstances surrounding plaintiffs' failure to prosecute this action and failures to comply with court

orders. In summary, plaintiffs' counsel filed a motion to withdraw which was granted by this court on April 27, 2018. In that order, the court directed plaintiffs to file a notice of self-representation or cause new counsel to file a notice of appearance in accordance with the local rules on or before May 21, 2018. Plaintiffs were warned that failure to comply could result in dismissal. The clerk sent copies of the order and the court's pro se complaint packet to plaintiffs via United States mail sent to the plaintiffs' residence address as provided in counsel's motion to withdraw. The non-final pretrial conference was continued from May 2, 2018 until June 5, 2018 to give plaintiffs adequate time to comply.

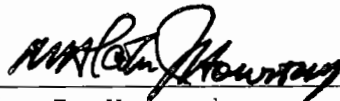
Plaintiffs have not filed a notice of self-representation nor caused new counsel to file a notice of appearance. They have not requested additional time to do so. Furthermore, on June 5, 2018, the pretrial conference was held. While counsel for the defendants appeared as directed, neither plaintiffs nor any counsel on behalf of plaintiffs appeared. Additionally, plaintiffs made no effort to contact the court or defense counsel regarding the same.

Following entry of the M&R, plaintiff Marcus Forehand sent to the court a document entitled Objections stating that he and Sabrina Liverman intend to obtain counsel. The document, however, does not attempt to comply with the court's prior orders, explain

why they did not show up for the pretrial conference, or request additional time to comply with the court's orders. Furthermore, the document is signed only by Mr. Forehand. Because he cannot represent Ms. Liverman in this action, she has waived her right to object. Finally, there is no certificate of service attached to Mr. Forehand's filing.

The court finds, viewing the totality of the circumstances in this case, that plaintiffs have failed to prosecute this action and have failed to comply with this court's orders. Therefore, in accordance with the recommendation of the magistrate judge, this matter is dismissed without prejudice. The clerk is directed to close this case and deem all other pending motions moot.

This 7<sup>th</sup> day of August 2018.



---

Malcolm J. Howard  
Senior United States District Judge

At Greenville, NC  
#26